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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 1410

MIDWESTERN GAS TRANSMISSION COMPANY,
EAST TENNESSEE NATURAL GAS COMPANY,
Petitioners,

v.

FEDERAL POWER COMMISSION, ET AL., *Respondents.*

RESPONSE OF INDEPENDENT NATURAL GAS ASSOCIATION OF AMERICA, IN SUPPORT OF PETITION

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RESPONSE OF INDEPENDENT NATURAL GAS ASSOCIATION OF AMERICA IN SUPPORT OF PETITION

The Independent Natural Gas Association of America (INGAA) supports the Petition for a Writ of Certiorari filed herein jointly by Midwestern Gas Transmission Company and East Tennessee Natural Gas Company.

INGAA is the trade association of the natural gas pipeline industry. Its membership includes almost all

the long-distance natural gas pipelines subject to the jurisdiction of the Federal Power Commission.

The decision of the United States Court of Appeals for the Seventh Circuit here for review affirms an order[1] of the Federal Power Commission that portends a significant and abrupt change in Commission policy with the potential for substantially adverse economic consequences to the natural gas pipeline industry. Because of the importance of these economic consequences to the industry, INGAA participated in the proceedings below as a full party and respectfully requests this Court to entertain the Petition in this matter.

STATEMENT

The amount of income taxes is one of the major components recognized in a pipeline's cost of service to be recovered through the rates it charges. In the computation of income taxes, depreciation of plant and property is one of the most important of the allowable deductions in arriving at taxable income.

It is important to an understanding of the industry's position in this case to trace, briefly, the chronology of the Federal Power Commission's treatment of the rate aspects of liberalized depreciation.

Prior to 1954, the straight-line method of depreciation was utilized by pipelines, as well as other industries, in computing the permitted "reasonable allowance" for depreciation of plant in determining taxable income. Under straight-line depreciation, the cost of

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[1] 36 F.P.C. 61 and 36 F.P.C. 599 (1966) (reprinted in Petitioners' Appendix 1a-69a and 69a-78a). The joint Petition states the jurisdictional basis for review of the decision below, the question presented and the statutes involved, which we adopt.

an asset (less the estimated salvage value) is amortized in equal installments over its useful life, and it was the general practice to use the straight-line method for calculating depreciation expense for book and rate purposes as well as for tax purposes.

In the Internal Revenue Code of 1954 (Section 167), Congress authorized several alternative methods of determining the permitted depreciation allowance. The new methods allowed an acceleration or faster write-off of investment in property units during the early life of an asset. The larger depreciation deduction resulted in lower income taxes during the early life years than would have resulted from straight-line methods. Lesser depreciation deductions during the later life of the asset, with increased income taxes, counterbalanced the accelerated early life deductions under the new methods. Thus, over the life of the asset, the liberalized methods and the straight-line method result in the same total depreciation deductions, amounting in each case to the allowable cost of the asset less its salvage value. This is the simple arithmetic of liberalized depreciation.

When liberalized depreciation methods became permissible techniques for computing income tax expense for tax purposes, the pipeline industry turned to the Federal Power Commission for a ruling or a declaration of its policy concerning the accounting and rate effect of such practices. Because tax expense is a legitimate cost to be recognized and compensated for in a utility's cost of service, the question immediately arose as to whether, in reviewing gas pipeline costs for rate purposes, the Commission would recognize only the lower initial tax expense produced by the utilization

of the liberalized depreciation deductions, or whether it would permit the normalization of tax depreciation expense for rate purposes.

Under the normalization theory, the difference between taxes paid and tax expense allowed for rate purposes would create a reserve for increased taxes deferred to the later years of plant life and, at the same time provide, in the interim, funds for immediate reinvestment in expanding plant, thus promoting the national policy and the legislative purpose behind these tax incentives. The new depreciation methods were purposely designed to stimulate reinvestment of the funds generated through the temporary reduction in taxes. The industry supported the normalization method, contending that was the only way in which the industry would have the additional dollars available for plant investment as intended by Congress. In addition, normalization would promote rate stability since the tax depreciation deduction would not fluctuate from year to year.

An opposite view contended that the Commission should recognize, in setting rates, only the lower current tax expense actually produced through the ultilization of liberalized depreciation and, consequently, "flow-through" immediately to the pipeline customers, the alleged "tax savings" resulting from accelerated depreciation practices. No reserve for future tax increases would be created under this latter view.

In its first thorough consideration of this matter, the Federal Power Commission declared that it would set rates based on normalized depreciation practices, even though the taxpayer-pipeline utilized liberalized depreciation methods in competing its current tax liability.

The Commission ordered the difference between the tax paid currently and the tax expense computed on a straight-line basis, placed in a special reserve to offset the increased taxes deferred to the later years of the plant's existence. *Amere Gas Utilities Co.*, 15 F.P.C. 760 (1956). In subsequent rate proceedings, the Commission followed through consistently with its declared policy and such policy received continuous judicial endorsement, whenever and wherever tested. *El Paso Natural Gas Co.*, 22 F.P.C. 260 (1959); remanded on other grounds, *El Paso Natural Gas Co.* v. *Federal Power Commission*, 281 F. 2d 567 (5th Cir. 1960); cert. denied, 366 U.S. 912 (1961); *United Fuel Gas Co.*, 23 F.P.C. 127 (1960); *affirmed sub nom., Cities of Lexington, et al.* v. *Federal Power Commission*, 295 F. 2d 109 (4th Cir. 1961); *Northern Natural Gas Company*, 25 F.P.C. 431 (1961); *Panhandle Eastern Pipeline Co.*, 25 F.P.C. 550 (1961); *affirmed, Panhandle Eastern Pipeline Co.* v. *Federal Power Commission*, 316 F. 2d 659 (D.C. Cir. 1963); cert. denied, 375 U.S. 881 (1963). In so deciding, the Commission lined up with the Civil Aeronautics Board, the Securities and Exchange Commission, and the majority of state regulatory commissions which had considered the matter.

In reliance upon the Commission's policy, most of the interstate natural gas pipelines regulated by the Federal Power Commission, including the Petitioners here, elected under Section 167 of the Internal Revenue Code, to utilize one of the methods of liberalized depreciation in computing their tax liability and they followed the Commission's directions in creating the related reserve account for future deferred taxes. In this connection, in *Amere* and subsequent cases, the

Commission had held that liberalized depreciation produced only tax deferrals. But in *Alabama-Tennessee Natural Gas Company*, 31 F.P.C. 208 (1964)[2] the Commission, in a 3-2 decision, reversed itself and held that the use of liberalized depreciation resulted in permanent tax savings. A new Commission majority thus abandoned the earlier normalization policy and directed that the rates of a company employing liberalized depreciation be set on the basis of the taxes paid currently. It adopted the "flow-through" policy which it had consistently rejected for eight years.

The Commission's reversal of policy in *Alabama-Tennessee* is directly related to the actions of the Petitioners in exercising their options under Section 167 to revert to straight-line depreciation. After that Commission decision, each of Petitioners, through appropriate corporate action, elected to revert to straight-line depreciation under the statutory option. In the opinion now here for review in this Court, the Court below affirmed the Commission's holding that Petitioners' Federal income tax expense for rate purposes should be computed on the basis of an assumed use of liberalized depreciation, even though they had exercised their admitted statutory option to revert to straight-line depreciation for tax purposes.

REASONS FOR GRANTING THE WRIT

The Court below reasoned that the Commission's action in this matter was merely another *Alabama-Tennessee* case. However, the Commission's action here is an unwarranted extension of the policy announced in the latter case.

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[2] *Affirmed*, 359 F. 2d 318 (5th Cir. 1966); *cert. den.* 385 U.S. 847, *rehearing den.* 385 U.S. 964 (1966).

In *Alabama-Tennessee,* the Commission held that where a pipeline company was *in fact* using accelerated depreciation for tax purposes, the lower taxes actually paid must be reflected in the form of lower rates. In that opinion the Commission expressly and categorically stated that its decision should not be interpreted as requiring mandatory flow-through.[3] Thus, the question of mandatory flow-through was not before the Fifth Circuit when it affirmed the Commission.[4] Furthermore, the Court did not vouch for the accuracy of the Commission's basic assumption of permanent tax savings to the pipeline company actually utilizing liberalized depreciation for tax purposes. It merely held that it could not find the Commission to be wrong. The Court recognized that the Commission's basic prognostication of permanent tax savings was only "a fair guess as to future conditions in the pipeline industry". Notwithstanding the foregoing, the Court below has sanctioned the Commission's construction of the Fifth Circuit's decision in *Alabama-Tennessee* as a mandate requiring Petitioners to compute Federal income taxes on the *assumed* utilization of the liberalized

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[3] 31 F.P.C. 210, where the Commission stated:

"The issue before us is the proper rate-making treatment for Alabama-Tennessee and other regulated companies which *claim the benefits of liberalized depreciation on their tax returns.* We do not have before us the question whether a utility which has not exercised its option to claim the tax benefits of liberalized depreciation should have its rates fixed on the basis of the availability of such higher depreciation deductions, and nothing in this opinion should be taken as an indication of our views on that question." (Emphasis supplied)

[4] *Alabama-Tennessee Natural Gas Company* v. *F.P.C.*, 359 F. 2d 318, *cert. denied,* 385 U.S. 847, *rehearing denied,* 385 U.S. 964 (1966).

depreciation provisions of Section 167, even though Petitioners were, in fact, using straight-line depreciation for tax purposes.

The decision in this case effectively compels the continuation of liberalized depreciation for tax purposes by any company which once elected such method in reliance upon the Commission's original normalization policy. It forces the Petitioners to charge a higher amount of depreciation for tax purposes than the Commission will permit to be charged for book purposes with respect to the very same property.

In addition to the reasons stated by Petitioners, the decision of the Court below is legally erroneous because:

1. The result of this decision is that Petitioners are effectively denied a clear option given to all taxpayers, under Section 167 of the Internal Revenue Code of 1954, to elect to return to straight-line depreciation after having initiated the use of liberalized depreciation. Petitioners are also being denied their statutory right to elect, annually, the method of tax depreciation to be used on plants installed each year. These options are explicitly conferred by statute.

2. The Commission's determination in this case is contrary to its own decisions in *United Gas Pipe Line Company,* 31 F.P.C. 1180 (1964), and *Wisconsin Michigan Power Company,* 31 F.P.C. 1445 (1964). Both of these cases were decided by the Commission after its *Alabama-Tennessee* decision; both involved companies which had never used liberalized depreciation as provided in Section 167 of the Internal Revenue Code, and, in both, the Commission approved the continuation of their method of determining tax depreciation for rate-

making purposes. Thus, the Commission discriminates between pipelines which have never elected to utilize liberalized depreciation and those which did, on the strength of the Commission's earlier policy, and now elect to return to the straight-line method in view of the consequences of a change in regulatory policy. The Commission's attempted distinction is legally unjustified and irrational as well as discriminatory.

3. The selection of the appropriate method of determining tax depreciation is a management decision. Where the selection of a method, which is optional by law, is made for reasonable and provident business purposes, the judgment of management should be left undisturbed

1. The Petitioners' Exercise of Their Statutory Option To Return to Straight-Line Depreciation Was Based Upon Sound Reasons

The Commission and the Court below conceded that Petitioners, as well as any other taxpayer, have an option, under the Internal Revenue Code, to elect to return to a straight-line tax depreciation method, at any time. No other interpretation of the Petitioners' rights could be logically or legally sustained. Indeed, so free is the option that, under Section 167(c)(1) of the Internal Revenue Code, a taxpayer may change at any time from liberalized depreciation to straight-line depreciation without the consent of the Commissioner of Internal Revenue. The normal rule is that a change in depreciation method, being considered a change in accounting, requires consent.

With the statutory right to elect the appropriate tax depreciation so clear, the Court erred in accepting the Commission's position that the option is neverthe-

less limited in a public service industry where management has a duty to avoid unnecessary expenses, citing *Acker* v. *United States,* 298 U.S. 426 (1935). However, this generalized rule, which limits reimbursement for improvident and reckless operating expenses, does not answer this case. No one disagrees with the philosophy expressed in the *Acker* case. The problem there related to the reasonableness of business expenditures. It does *not* relate to taxes computed in accordance with an absolute and unqualified statutory right provided by Congress. The justifiable business reasons which motivated Midwestern's and East Tennessee's management to elect, under the permissible statutory provision, to return to straight-line tax depreciation are not at all comparable to the profligate or wasteful practices involved in the *Acker* case. Nor does *El Paso Natural Gas Company* v. *FPC,* 281 F. 2d 567 (5th Cir. 1960) cert. den., 366 U.S. 912 (1961) involve any question of choice of tax options on the part of the company or a question of abuse of discretion. In fact, in that very case, the Court approved "normalization" and a full return upon the accumulated reserve.

The choice between liberalized depreciation and straight-line depreciation is a choice in the *timing* of the permissible *total* depreciation allowance—whether to take more of the allowance in the early years of the life of a depreciable asset and less in the later, or whether to write-off the cost evenly over the life of the asset. With either method, the total depreciation allowed over the life of the asset is the same.

But the economic consequences to the pipeline industry are not the same, if the industry is compelled to "flow-through" the tax effect of liberalized depreciа-

tion instead of being permitted to utilize straight-line tax depreciation for rate making. Admittedly, the result of the Commission's decision, as applied to a given plant facility, is to use *tomorrow's* depreciation deduction to give a rate reduction *today* and, in so doing, the Commission borrows against the uncertain and unpredictable future. This policy adopts the philosophy of one of the large airlines: "Fly now—pay later."

The Commission contends that interstate pipelines are an ever-expanding growth industry. This speculative forecast is the principal justification for the result below. If the Commission estimate of the future proves to be incorrect, this decision threatens Petitioners with grave economic consequences. Yet, the insurance which they seek to enable them to avoid such consequences, and to protect them from errant clairvoyance, costs no more than the actual cost of service to present consumers.[5]

In view of the Commission's change of policy as announced in *Alabama-Tennessee, supra,* management responsibility required a re-evaluation of pipeline depre-

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[5] The rates which the consumers pay under the normalization and full return approach are virtually the same as they would pay had there been no such thing as liberalized depreciation under our tax laws. As the Court of Appeals for the District of Columbia said, in approving the Commission's use of normalization and full return on the facilities constructed with the funds generated through the use of accelerated amortization (*City of Detroit, Michigan* v. *F.P.C.*, 230 F. 2d 810, 822 (D.C. Cir. 1955)):

> "Furthermore, the solution of the Commission does not result in higher rates to the consumer. It simply does not operate to reduce them. It aids Panhandle but neither aids nor harms petitioners. We think this is the result sought by Congress."

ciation practices. In making such re-evaluation, Petitioners' managements had to make their own forecasts as to the future and both concluded it is now more prudent for their companies to utilize straight-line depreciation for both tax and rate purposes in order to effect an even distribution of depreciation tax deductions over the remaining lives of their properties.

Straight-line method of depreciation amortizes the original cost (less estimated salvage value), in equal annual deductions, over the useful life of the property and neither present nor future customers will be favored or disadvantaged; both generations will share equitably in the cost reducing effect of the depreciation tax allowance, and the taxpayer will not be forced to risk the financial consequences which the Commission's decision portends.

2. The Decision Below Is Discriminatory and in Conflict With the Commission's Own Recent Decisions

The Commission's decision below is also contrary to the Commission's own precedent in two cases, decided after *Alabama - Tennessee,* dealing with companies which had never utilized liberalized depreciation. In *United Gas Pipe Line Co.,* Opinion No. 428, 31 FPC 1180 (1964), and *Wisconsin - Michigan Power Co.,* Opinion No. 432, 31 FPC 1445 (1964), the Commission refused, in the face of a clear challenge, to require these companies to use liberalized depreciation. In the *Wisconsin-Michigan* case, the Commission stated (31 FPC at 1457-58):

> "We have heretofore taken the position that, if a utility chooses to utilize a liberalized depreciation option permitted by the tax laws, the benefits thereof must be flowed through to ratepayers within the operating year. Intervenors would have us

> go one step further and set the rates of a regulated utility as if it voluntarily used liberalized depreciation (as well as guideline service lives), even though the utility in fact chose to employ straight-line depreciation, as Wis-Mich has done. Intervenors' position proceeds from the proposition that public utilities are obligated to operate with all reasonable economies, including the lowest reasonable tax burden, and to pass these economies along to the rate-payer.
>
> "While there can be no dispute with the principle that utilities should operate with maximum efficiency, we do not believe this rule leads to the conclusion urged by the Intervenors. On this record it is clear that this Company has never used liberalized depreciation and has chosen to apply straight-line depreciation to its property as a matter of business judgment. *Its officers firmly believe this to be the wisest course in the long range interest of the Company and its customers.* The case that has been made for requiring the Company to use (or for assuming it has used) guideline service lives is not persuasive, either on the facts of this case or as a general principle, and we could not accept the Intervenors' position in this regard. *As to liberalized depreciation, the tax laws give management the option not to take liberalized depreciation and we do not believe that on this record we should in effect deprive the Company of its option under the tax law.*" (Emphasis supplied.)

The foregoing reasoning is equally applicable to the action of the Petitioners in the instant case. It would be difficult to distinguish the reasoning of the Commission in the *United* and *Wisconsin-Michigan* cases from the facts presented herein. With respect to future plant additions, there is absolutely no factual difference.

The record, in this case, clearly establishes that the executives of Petitioners ". . . firmly believe this to

be the wisest course in the long range interest of the company and its customers." It is, therefore, apparent that the Commission is discriminating between pipelines which have never used liberalized depreciation and those which did, but now elect to return to a straight-line method in light of the change in regulatory policy.

3. Management Determination to Revert to Straight-Line Depreciation Was a Reasonable Business Judgment Which Should Be Left Undisturbed

Business decisions made in the day-to-day operations of the utility property, in incurring expenses, in planning future expansions and service are the prerogative of management. Unless there is clear and gross abuse of discretion, such determinations are not to be second-guessed by regulatory agencies. The rule is expressed by this Court in *Southwestern Bell Telephone Company* v. *Public Service Commission*, 262 U.S. 276, 289 (1923), as follows:

> ". . . It must never be forgotten that while the State may regulate with a view to enforcing reasonable rates and charges, it is not the owner of the property of public utility companies and is not clothed with the general power of management incident to ownership. The applicable general rule is well expressed in *State Public Utilities Commission ex rel. Springfield* v. *Springfield Gas and Electric Company*, 291 Ill. 209, 234.
>
> > 'The commission is not the financial manager of the corporation and it is not empowered to substitute its judgment for that of the directors of the corporation; nor can it ignore items charged by the utility as operating expenses unless there is an abuse of discretion in that regard by the corporate officers.'"

The Commission's decision in *Alabama-Tennessee* constituted a substantial change in Commission policy relating to liberalized depreciation. The rules of the game were completely changed. Both Midwestern and East Tennessee have advised the Commission that, had they been aware of the Commission's policy as enunciated in *Alabama-Tennessee* prior to their first use of liberalized depreciation, neither of them would have ever utilized that provision.[6] Their position is representative of the industry view. The natural gas pipelines, with few exceptions, would not have utilized the liberalized depreciation provisions of Section 167 of the IRC had they known that the Commission's policy, as originally announced in *Amere,* and which had received judicial approval, would be completely reversed.[7]

It is of utmost significance that Congress made liberalized depreciation optional, not mandatory. Considering its purpose to stimulate investment,[8] Congress could have made some form of liberalized depreciation mandatory, and not relied upon the optional nature of the inducement of accelerated tax-free funds. But Congress did not do so, instead permitting the manage-

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[6] (R. 462).

[7] In this connection it is important to note that the industry did not elect to utilize liberalized depreciation until the Commission had first announced its position and policy with respect thereto—both accounting-wise and rate-wise.

[8] See Report of the Committee on Ways and Means, House of Representatives, to accompany H.R. 8300, a bill to revise the internal revenue laws, H. Rep. No. 1337, 83d Cong., 2d Sess., p. 24 (1954); Report of the Committee on Finance, United States Senate, to accompany H.R. 8300, S. Rep. No. 1662, 83d Cong., 2d Sess., p. 26 (1954).

ment of each company to make the decision in the light of its needs and circumstances.

State commissions, such as those in California and New York, which have ordered flow-through for companies actually utilizing liberalized depreciation, have nevertheless clearly avoided compelling utilities, under their jurisdiction, to utilize accelerated depreciation practices against a management determination to the contrary.

The California Commission stated:

> "As a general proposition, it is a matter to be determined in the first instance by the management of a public utility as to whether or not liberalized depreciation will be availed of or whether straight-line depreciation will be used." *Re: Tax Treatment of Accelerated Depreciation,* 33 P.U.R. 3d 209, 215, 216 (Cal. P.U.C. 1960).

The New York Commission earlier recognized a similar management prerogative:

> ". . . We think that the selection of the method of depreciation for tax reporting purposes is peculiarly a managerial determination. . . ." (*Re: Niagara Mohawk Power Corp.,* 28 P.U.R. 3d 171, 194 (N.Y.P.S.C. 1959)).

In the following cases, utilities which had been employing accelerated depreciation reverted to straight-line depreciation after state commissions adopted the flow-through method. In each of these cases, the higher straight-line taxes were allowed in subsequent rate cases on the ground that the election was a matter of managerial discretion: *City of Pittsburgh* v. *Pennsylvania Pub. Util. Comm'n.,* 144 A.2d 648, 25 P.U.R. 3d 273 (1958); *Re: Southern Cal. Gas Co.,* 35 P.U.R. 3d 300 (1960); *Re: San Diego Gas & Elec. Co.,* 39 P.U.R.

3d 417 (1961); *Re: Housatonic Pub. Ser. Co.*, 22 P.U.R. 3d 1 (1958); *Re: Raytown Water Co.*, 22 P.U.R. 3d 556 (1958); *Re: Piedmont Natural Gas Co.*, 34 P.U.R. 3d 1 (1960); *Pennsylvania Pub. Utility Comm'n.* v. *Pennsylvania Power Co.*, 33 P.U.R. 3d 177 (1960); *Re: Cumberland & Allegheny Gas Co.*, 28 P.U.R. 3d 93 1959).

In the following cases, management's right to elect not to adopt accelerated depreciation was sustained against attacks by advocates of mandatory flow through: *Re: New England Tel. & Tel. Co.*, 23 P.U.R. 3d 510 (1958); *Re: The Mountain States Tel. & Tel. Co.*, 31 P.U.R. 3d 417 (1960); *Pennsylvania Pub. Util. Comm'n.* v. *Peoples Natural Gas Co.*, 17 P.U.R. 3d 330 (1957); *Pennsylvania Pub. Util. Comm'n.* v. *Peoples Natural Gas Co.*, 31 P.U.R. 3d 283 (1959).

The foregoing authorities clearly demonstrate that the choice between liberalized or straight-line depreciation is a management decision which should be recognized by the regulatory agency for rate-making purposes. This is true not only with respect to the initial election but also with respect to the election to revert to straight-line depreciation even though the regulated company may, at any time, have utilized liberalized depreciation pursuant to Section 167.

It is important to note that the decision of the Petitioners, in this case, to revert to straight-line depreciation was not a decision prompted by reactionary impulses, resentment or pique. Rather, as the record reflects, the decision was based upon a sincere concern for the future.[9] While the rates may be reduced temporarily, it must be recognized that the Commission is powerless to guarantee the correspondingly

[9] (R. 3, 9, 29-35, 54, 60-66, 106-107, 359, 396, 485-486, 491-492).

higher taxes which will necessarily be incurred in the future. This becomes highly significant when consideration is given to the ever increasing inter-fuel competition which may make it impossible to collect higher rates, even though allowed by the regulatory body.

The impropriety of the decision below is underscored in a case such as this where an evaluation of Midwestern's and East Tennessee's election to take straight-line depreciation depends in large part upon their growth prospects, their present and future risks, their financial requirements and their market prospects, all matters with which management obviously has for greater familiarity than the Commission.

In this connection we submit that the poignant remarks of Commissioner Carl E. Bagge, which are set forth in the final paragraphs of his dissent in the instant proceeding, are particularly appropriate (R. 470):

> "Proponents of mandatory flow-through must make certain assumptions in concluding that there is no risk of increased future taxes. I do not say that these assumptions are categorically false, but I do say that this case gives no certainty to these assumptions. They must be guessed and cannot be proven.
>
> "I, unlike the majority, do not have so much faith in my 'clairvoyance' that I can totally ignore the past and be content to speculate about a future which may be replete with major technological breakthroughs in liquified natural gas, manufactured gas, solar cells, and other products and services which could change the very configuration of the industries which we regulate. It is one thing, once a company, with full knowledge of the facts, has decided to take the risks inherent in liberalized depreciation, to require it to flow the benefits through. It is quite another to force a

company, against the informed judgment and expertise of its management, to incur these risks. It is long past time for us as regulators to recognize that our regulatory responsibilities extend beyond the short run protection of the consumer. The protection of the long range interests of the consumer is dependent upon the financial integrity of the public utilities which serve him. In this regard his interests are closely allied with those of the millions of people who have invested billions of dollars in public utilities, accepting a smaller return than would otherwise be possible because they seek greater security of investment. The investors deserve some protection too. The risk to both consumer and investor is too great, the stakes too high, to wave aside the very real danger they face in order to grant to only one of them what is, at best, a short-range benefit, and what may, in the long run, be no benefit at all."

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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